JUDGMENT OF THE DISTRICT COURT

The United States District Court for the Middle District of Florida, Tampa Division, John C. Amis, Jr., President, Amey + Monge, Inc. vs. Internal Revenue Service and Charles O. DeWitt, Director entered the following order on January 8, 1981: Plaintiff's motion to require detailed justification, itemization and indexing in a form to comport with Vaughn v. Rosen 484 F.2d 820 is granted.

On March 4, 1981 the Court issued an Order of Dismissal without prejudice to the rights of any party, to re-open the acton within 60 days, upon good cause shown, or to submit a stipulated form of final judgment.

On March 13, 1981 the Court issued an Order granting MoVant(s) until April 15, 1981 in which to file a memorandum in opposition to Plaintiff's motion for attorney fees.

On April 21, 1981 the Court issued an order that each party is to pay his own costs, and that the case stands finally dismissed.

On May 11, 1981 the Court granted Plaintiff's motion for a review of orders. The Court found them in good order and the case remained dismissed.

OPINION OF THE COURT OF APPEALS

The following Opinion was filed in the United States Court of Appeals for the Eleventh Circuit in Case No. 81-5433 on March 30, 1982.

Appellant Amis is the president of Amey + Monge, Inc. In January, 1980, the secretary of Amey + Monge wrote to the I.R.S. and requested copies of "any and all records pertaining to Amey + Monge, Inc.," pursuant to the Freedom of Information Act (FOIA). the I.R.S. processed the request and released copies of seventeen pages of documents Amis had requested, withholding other documents based upon the exemptions provided under 5 U.S.C. §§ 552(b)(3), (b)(7)(D). the I.R.S. claimed that release of the documents being withheld would interfere with ongoing enforcement proceedings, disclose

the identity of a confidential informant, and reveal information prohibited by statute.

Amis, proceeding *pro se*, filed a complaint under the FOIA and the Privacy Act seeking production of the requested documents for his inspection. In addition, Amis sought attorney's fees and costs. Amis then filed a motion under the authority of Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974), to require the I.R.S. to furnish a detailed justification for the claims of exemption, an itemization, and an index of the documents withheld.

At a hearing on all pending motions, the government argued that Amius had initiated the suit in order to compel the I.R.S. to release to him certain documents relating to an ongoing civil investigation of his tax liabilities. At the conclusion of the hearing, the district court ordered the I.R.S. to prepare, file and serve a Vaughn index within forty days.

On February 12, 1981, the I.R.S. determined that there no longer existed any reason to withhold the documents Amis had requested because the identity of the confidential informant had been revealed. The I.R.S. released all the documents previously requested, but expressly stated that the disclosure was not an admission that the documents had been improperly withheld.

Amis then filed a motion seeking to recover attorney's fees and costs. The district court denied Amis' claim for attorney's fees and ordered each party to bear his own costs. We affirm.

Appellant contends that he is entitled to $6,057.50 as attorney's fees incurred in the FOIA litigaton. The FOIA, 5 U.S.C. § 552(a)(4)(E) provides:

> The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

With the exception of the substitution of "paragraph" for "section", the identical statutory provision appears in

the Privacy Act, 5 U.S.C. § 552 (g)(3)(B). In construing the attorney fees provision of the Privacy Act, the former Fifth Circuit concluded that attorney's fees could not be awarded to a *pro se* litigant who was not an attorney. Barrett v. Bureau of Customs, 651 F.2d 1087, 1089-90 (5th Cir. 1981). Although *Barrett* arose under the Privacy Act, rather than the FOIA, the Court recognized that its conclusion applied with equal force to the virtually identical provisions of the FOIA. *Id.*, at 1088-89. Amis is not entitled to attorney's fees.

Appellant also contends that he is entitled to recover his costs in bringing the action because he "substantially prevailed" in his suit against the I.R.S. The mere fact that the information he sought was not released until after the suit was instituted without more is insufficient to establish that a plaintiff "substantially prevailed". In the absence of a court order in his favor, a plaintiff must show: (1) that prosecution of the action could reasonably be regarded as necessary to obtain the information and (2) that the action had a substantive causation effect on the delivery of the information. Lovell v. Alderete, 630 F.2d 428, 432 (5th Cir. 1980). This record discloses that the only court order regarding the documents was that requiring the I.R.S. to submit a *Vaughn* index. Requiring a *Vaughn* index falls far short of a determination that disclosure of the documents being withheld is required; consequently, Amis must satisfy the *Lovell* criteria.

Here I.R.S. voluntarily released the documents it was withholding under a claim of exemption, after the identity of a confidential informant was revealed, thus, obviating the need for them to be withheld. Therefore, it appears that a change in circumstances, rather than the institution of the suit, was the causative factor in the delivery of the requested information. Under these facts, the district court's decision that each party bear its own costs did not constitute an abuse of discretion, *See, Lovell*, 630 F.2d at 431-32.

Affirmed.

NOTICE OF APPEAL

TO THE SUPREME COURT OF THE UNITED STATES

The following Notice of Appeal was filed in the United States Court of Appeals for the Eleventh Circuit, John C. Amis, Jr., President, Amey + Monge, Inc., vs. Internal Revenue Service and Charles O. DeWitt, District Director, No. 81-5439, on April 9, 1982.

Notice is hereby given that John C. Amis, Jr. the Appellant named above, hereby appeals to the Supreme Court of the United States from the final judgment of the Eleventh Circuit Court of Appeals which denied attorney fees and costs to Appellant on March 30, 1982.

This appeal is taken pursuant to 28 U.S.C.A. 1253.